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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

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ORACLE AMERICA, INC.,     )  
                    Plaintiff,     )  
                    vs.                     ) No. CV 10-03561 WHA  
GOOGLE, INC.,                 )  
                    Defendant.     )  
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Videotaped deposition of JONATHAN SCHWARTZ,  
taken at the Law Office of Keker & Van Nest LLP,  
710 Sansome Street, San Francisco, California,  
commencing at 9:40 a.m., on Wednesday, July 20,  
2011, before Leslie Rockwood, RPR, CSR No. 3462.

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<p>1 A. Yes.</p> <p>2 Q. So it was a lot more than just a license of</p> <p>3 technology?</p> <p>4 A. Yes.</p> <p>5 Q. Was there actual discussion about Sun 12:16:51</p> <p>6 engineers and Android engineers working together?</p> <p>7 A. Yes.</p> <p>8 Q. At the end of the day, was Sun willing to do</p> <p>9 whatever it was that Google was offering?</p> <p>10 A. At the end of the day, we would have done the 12:17:03</p> <p>11 deal for free, had they elected to use Sun technology.</p> <p>12 We might have even paid for the privilege to participate.</p> <p>13 Q. Why is that?</p> <p>14 A. Because the net effect of being engaged with</p> <p>15 a handset platform that we knew would be globally 12:17:18</p> <p>16 successful would have a considerable halo effect for Sun</p> <p>17 just in our own brand image, leaving aside access to</p> <p>18 carriers to talk about how we could create, you know,</p> <p>19 alternatives and variations for them.</p> <p>20 Q. So had the negotiations continued, 12:17:35</p> <p>21 Mr. Schwartz, your view is that Sun would have been</p> <p>22 willing to license all of Java and provide support and so</p> <p>23 on either for free or including some payment to Google?</p> <p>24 MS. RUTHERFORD: Objection.</p> <p>25 THE WITNESS: Yes, to the extent that you 12:17:55</p> <p style="text-align: right;">Page 110</p>	<p>1 THE WITNESS: Yes.</p> <p>2 Q. BY MR. VAN NEST: Did you ever discuss</p> <p>3 financial terms with Mr. Gupta for such an arrangement?</p> <p>4 A. We seemed to have what was on the one hand an</p> <p>5 ongoing dialogue that, on the other, was just kind of 12:19:31</p> <p>6 abruptly terminated. I don't think the complexity</p> <p>7 surrounding the deal was ever the monetary terms.</p> <p>8 Q. But again -- but again, Mr. Schwartz, your</p> <p>9 view as the CEO at the time was in terms of a negotiation</p> <p>10 with Google to participate in Android, that had enough 12:19:54</p> <p>11 value to Sun that Sun would have been willing to pay</p> <p>12 money for it?</p> <p>13 MS. RUTHERFORD: Objection. Are you talking</p> <p>14 about the actual terms of the contract or what it was in</p> <p>15 Mr. Schwartz's mind? 12:20:09</p> <p>16 MR. VAN NEST: I'll let the question stand.</p> <p>17 You may answer.</p> <p>18 THE WITNESS: It would have been of</p> <p>19 significant strategic value for Sun to be on stage with</p> <p>20 Google announcing Android. That had value, potentially 12:20:19</p> <p>21 significant value. To not be on stage was not as</p> <p>22 valuable.</p> <p>23 So would the 10 million, which if I recall</p> <p>24 was year one payment from Google to Sun, would that have</p> <p>25 changed in any way our financial destiny? No. So would 12:20:39</p> <p style="text-align: right;">Page 112</p>
<p>1 recall if the choice is -- and I believe I actually</p> <p>2 stated this at the time -- better Java than Brew. Better</p> <p>3 our Java than whatever they deliver.</p> <p>4 So it comes down to a very simple decision.</p> <p>5 If you're included, you have a seat at the table and an 12:18:15</p> <p>6 access to the marketplace. If you're not included, then</p> <p>7 you have no similar -- you know, no such access to the</p> <p>8 marketplace.</p> <p>9 The middle ground is they used technologies</p> <p>10 that amplify the same technologies that we build, we can 12:18:31</p> <p>11 at least be a part of that dialogue.</p> <p>12 Q. BY MR. VAN NEST: And I take it you would</p> <p>13 have been the ultimate decision maker on any particular</p> <p>14 deal with Google at this level?</p> <p>15 A. Had economic terms been the determinant of 12:18:44</p> <p>16 whether we could do a deal, yes.</p> <p>17 Q. In other words, as CEO, you would have had</p> <p>18 the final say on anything Mr. Gupta was proposing with</p> <p>19 Google; correct?</p> <p>20 A. Yes, yes. 12:19:00</p> <p>21 Q. And it's your view that had Google been</p> <p>22 willing to do it, Sun would have been willing to pay for</p> <p>23 the right to participate in a technology partnership with</p> <p>24 Google over Android?</p> <p>25 MS. RUTHERFORD: Objection. 12:19:14</p> <p style="text-align: right;">Page 111</p>	<p>1 we have waived that for ultimately being a premier</p> <p>2 technology partner alongside Google? I believe we would</p> <p>3 have. I didn't have that option.</p> <p>4 Q. BY MR. VAN NEST: But had you had that</p> <p>5 option, you certainly would have approved it? 12:20:53</p> <p>6 A. Yes.</p> <p>7 Q. And as CEO, again, you had the authority to</p> <p>8 do that?</p> <p>9 A. Yes.</p> <p>10 Q. Now, when Google first announced the Android 12:21:02</p> <p>11 software developers kit in 2007, did Sun in effect</p> <p>12 embrace it publicly?</p> <p>13 A. Yes, we did.</p> <p>14 Q. What did you say about it in the market?</p> <p>15 A. That we were -- you know, I think what I said 12:21:20</p> <p>16 internally was better than Brew. Brew was a</p> <p>17 completely variant platform that had no real benefit to</p> <p>18 Sun, built by Qualcomm, and that at least they were using</p> <p>19 the Java programming language. They would -- you know,</p> <p>20 we would be able to interact by providing technologies 12:21:42</p> <p>21 that would support it and hopefully continue to engage in</p> <p>22 dialogues with customers and partners.</p> <p>23 Q. So do you remember congratulating Google on</p> <p>24 the launch of Android?</p> <p>25 A. I do. 12:21:57</p> <p style="text-align: right;">Page 113</p>

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1	STATE OF CALIFORNIA ) ss:	1	DEPOSITION EXHIBITS
2	COUNTY OF MARIN )	2	JONATHAN SCHWARTZ
3		3	GOOGLE EXHIBITS DESCRIPTION IDENTIFIED
4	I, LESLIE ROCKWOOD, CSR No. 3462, do hereby	4	
5	certify:	5	Exhibit 52 CNET News, internet printout, 40
6	That the foregoing deposition testimony was	6	6/22/11, GOOGLE-00-00000516
7	taken before me at the time and place therein set forth	7	- 519
8	and at which time the witness was administered the oath;	8	Exhibit 53 Sun Reveals a Slew of Moves 45
9	That testimony of the witness and all	9	at JavaOne, GOOGLE-00-
10	objections made by counsel at the time of the examination	10	00000520 - 522
11	were recorded stenographically by me, and were thereafter	11	Exhibit 54 Email from Jonathan Schwartz 57
12	transcribed under my direction and supervision, and that	12	to Jeet Kaul, 12/5/08,
13	the foregoing pages contain a full, true and accurate	13	OAGOOGL0003901182
14	record of all proceedings and testimony to the best of my	14	Exhibit 55 Newsmaker: Sun's Open Source 61
15	skill and ability.	15	Odyssey, GOOGLE-00-00000494
16	I further certify that I am neither counsel	16	- 497
17	for any party to said action, nor am I related to any	17	Exhibit 56 eWeek, Sun's Schwartz Opens Up 65
18	party to said action, nor am I in any way interested in	18	About Sun's Open-Source Java,
19	the outcome thereof.	19	5/16/06, GOOGLE-00-00000504
20	IN WITNESS WHEREOF, I have subscribed my name	20	- 506
21	this 24th day of July, 2011.	21	Exhibit 57 Sun Microsystems CEO Jonathan 68
22		22	Schwartz on What's Next for
23		23	OpenSource, 3/23/09, GOOGLE-00-
24		24	00000490- 491
25	LESLIE ROCKWOOD, RPR, CSR NO. 3462	25	
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3		3	Exhibit 58 Email from Jonathan Schwartz 72
4	WEDNESDAY, JULY 20, 2011	4	to Marten Mickos, 1/12/08,
5		5	OAGOOGL0004648998 - 001
6	WITNESS EXAMINATION	6	Exhibit 59 Email from Jonathan Schwartz 76
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